

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re:

:

Docket #03cv9685

MCCRAY, RICHARDSON, SANTANA,
WISE AND SALAAM LITIGATION

:

: New York, New York
September 8, 2011

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PROCEEDINGS BEFORE
MAGISTRATE JUDGE RONALD L. ELLIS,
UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiffs
McRay, Richardson,
Santana, and Salaam:

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Transcript produced by transcription service

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None

E X H I B I T S

<u>Exhibit Number</u>	<u>Description</u>	<u>ID</u>	<u>In</u>	<u>Voir Dire</u>
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None

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2 THE CLERK: In the matter of McRay, Richardson,
3 Santana, Wise & Salaam Litigation. Counsel, please state your
4 name for the record.

5 MR. MYRON BELDOCK: Myron Beldock, from Beldock,
6 Levine & Hoffman, for the Salaam plaintiffs, as well as Karen
7 Dippold.

8 MR. MICHAEL WARREN: Michael Warren, 580 Washington
9 Avenue, Brooklyn, New York, appearing on behalf of plaintiffs
10 Richardson, McCray, and Santana.

11 HONORABLE JUDGE RONALD L. ELLIS (THE COURT): Good
12 morning.

13 MR. WARREN: Good morning, your Honor.

14 MR. BELDOCK: Your Honor, there is no one here on
15 behalf of defendant, pardon me, of plaintiff Wise. That
16 counsel understands that we will stand in for them and they
17 may be able to come here, someone may be able to come here
18 while we're in process.

19 THE COURT: From what my reports are this morning,
20 everybody had a little trouble getting here.

21 MR. BELDOCK: They have another court appearance
22 that they had to attend to, but they understand that we're
23 proceeding without them.

24 THE COURT: We certainly will do that.

25 MS. GENEVIEVE NELSON: Genevieve Nelson, Assistant

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2 Corporation Counsel, for defendants. With me is Elizabeth
3 Daitz and Philip DePaul. Good morning, your Honor.

4 THE COURT: Good morning.

5 MS. PATRICIA BAILEY: Good morning, Your Honor,
6 Patricia Bailey.

7 THE COURT: Okay, good morning. First of all, with
8 respect to the in camera inspection, I have not actually
9 completed it. I did the unthinkable and took some time off.
10 But I have started going through it and some questions have
11 arisen as I was looking at them and I guess I want to direct
12 this to the City so I know what it is that I'm looking at.

13 In some of the documents, there appear to be
14 information that is listed and it seems to be based upon
15 interviews. And I wasn't sure whether or not the person was
16 looking at a video and summarizing it and that the plaintiff
17 had the video, can you --

18 MS. DAITZ: Yes, your Honor, all the video tapes
19 have been disclosed, they were disclosed in the underlying
20 criminal trial and they were disclosed again in the civil
21 litigation. To the extent that there are handwritten notes
22 taken by the ADA defendants that are in the in camera brief
23 set provided to the Court, there were handwritten notes taken
24 during the ADA's subsequent review of the video tapes in
25 preparation for the prosecution.

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2 THE COURT: Okay. All right, I may ask for further
3 clarification when I'm totally finished but I don't anticipate
4 that taking too much longer.

5 With respect to the dispute that has arisen more
6 recently concerning the training materials in plaintiff
7 request 66 and 67, I must admit that although I read the
8 parties' submissions, I wasn't sure why you were having a
9 dispute. It seemed fairly clear to me that at least on the
10 basic underlying premise that the plaintiffs had set forth
11 some requests for training materials, that the simple thing
12 would be for the City to produce the training materials that
13 were asked for. And I wasn't sure why that didn't happen. I
14 understand that the City wanted some broader protection for
15 other training materials, but it seemed to me those were
16 separate issues.

17 MS. DAITZ: Your Honor, if I may, the City, by the
18 City I mean the Corporation Counsel Office, collects training
19 materials from the Agency, obviously to review and produce in
20 connection with, for instance, this litigation. And when we
21 collected the training materials, you know, there are
22 thousands of pages that we collect at one time and some of
23 them are, for instance, like a whole criminal investigations
24 course manual or a whole detectives manual. So as they're
25 being reviewed, we make a determination with respect to

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2 sections as to whether they are responsive to plaintiffs'
3 requests or whether there is something that although
4 plaintiffs did not request, we would be producing in support
5 of our defenses.

6 So they were reviewed and prepared for production
7 and asked and that's what we did in this case. And the
8 production is ready to go out, pending an agreement as to
9 their confidentiality. We don't understand why plaintiffs are
10 drawing a distinction in terms of confidentiality between the
11 documents that are specifically responsive to their requests
12 and documents that are produced in support of our defenses.

13 THE COURT: Okay, well I understand that but if I
14 understand the process as these things go with training
15 materials or other materials from some defendant or some
16 entity, there are sections, and you know which sections you
17 want to produce to the plaintiff, or sometimes it's the other
18 way around, you can designate which ones are responsive so
19 that the plaintiffs know which ones are responsive to their
20 requests 66 and 67. What you want to do is you want to
21 produce the whole thing and you don't want them to be not
22 subject to confidentiality, although it does seem to me, and
23 I'm not sure at some point the plaintiff didn't suggest this,
24 that you can designate them as confidential, the rest of the
25 training materials, and designate which ones are responsive.

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2 MS. DAITZ: Well, your Honor, pursuant to the
3 stipulation and protective order that governs discovery, it
4 states, specifically paragraph 283, there are only two ways
5 that a producing party can designate documents confidential
6 that are not explicitly contemplated in the language of the
7 stipulation. And that's either pursuant to an agreement
8 between the parties, or to have the Court deem them
9 confidential. So we can't just, under the stip we can't just
10 produce them all with a confidentiality designation without an
11 agreement in place.

12 THE COURT: Okay, let me just understand. You
13 believe that the other training materials should be
14 confidential --

15 MS. DAITZ: Yes, your Honor --

16 THE COURT: But you can't designate them as
17 confidential without an agreement?

18 MS. DAITZ: That's what the stipulation says.

19 THE COURT: And is that the way it works?

20 MS. DIPPOLD: Your Honor, you are quite correct,
21 they're two completely separate issues. The issue, the first
22 issue we'd like resolved is we would like a response to our
23 very specific document requests. We designated the issues we
24 want to know about, we asked for the materials, we entered
25 into an agreement with Corporation Counsel that they materials

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2 they produced in response to these requests would be
3 confidential. We have no problem agreeing that training
4 materials should be confidential, we just simply want two
5 things. We want them to respond to our specific requests,
6 which have been pending for a year and a half, and we want
7 them to give us an idea of what documents they're producing.
8 They say they're producing things from the "Police Students
9 Guide," fine, tell us that it's the "2003 Police Students
10 Guide," and that's enough, we'll agree that those documents
11 are confidential.

12 The problem is if they just produce 500 loose pages,
13 if you look at these guides, there is no way to tell what year
14 they're from or what particular course they're from. And we
15 just need the appropriate information so we can agree they're
16 confidential. We're not going to hand them out to anyone
17 else, we're agreeing they'll be confidential, and they can,
18 pursuant to the stip, although this is not the way I think it
19 should be done, they could just produce all 500 pages and then
20 we would challenge those that we think are not appropriately
21 subject to the stipulation.

22 THE COURT: Okay, frankly, it doesn't sound as if
23 you're that far apart. If I understand correctly, what the
24 plaintiffs want is they want to make sure that if you produce
25 anything they know where it's from and when it's from. And

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2 that if you had, for example, a training manual and it had a
3 table of contents, you would designate which parts of the
4 table of contents are responsive to what the plaintiff wants.
5 And what you want to not have to do is to break it up into
6 parts and do it piecemeal.

7 MS. DAITZ: Your Honor, if I may, with all of
8 defendants productions that we've done, close to 80,000
9 documents to date, we have always made a production
10 identifying the source of the materials being produced, what
11 range of Bates numbers, what type of document, and we certain
12 intend to do that in this case. We're not just going to
13 produce here are the training materials, but at the same time,
14 to have defendants obligated to list out the dates and the
15 years as a precursor to an agreement on confidentiality, is
16 counterproductive and it is also counter to the explicit
17 language of the stipulation which says that the receiving
18 party, upon receipt of the document, has to list out whatever
19 documents they feel are not properly designated confidential.

20 THE COURT: All right, counsel, I'm going to go out
21 on a limb on this one, I'm going trust all of you, all right,
22 I'm going to expect that what the defendants are going to
23 produce is the training materials sufficiently designated and
24 identified so that the plaintiffs know where they are. I mean
25 if you're right, then there is no problem, then I won't hear

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2 from the plaintiffs that say they can't figure it out.

3 I suspect, and I don't know this for sure, that in
4 some respects what the plaintiffs already have, and I'll get
5 to that later, isn't sufficiently designated so that one could
6 make those kind of determinations. But I certainly expect
7 anything that you produce to them will be identified so that
8 they know where and when it's from. As to the parts -- but you
9 need to identify which ones are specifically responsive to the
10 66 and 67.

11 As to the rest of it, just it seems to me from the
12 point of view of efficiency, it makes sense for you to produce
13 an entire document, as long as the ones that are responsive
14 are designated. And so if the question is whether or not
15 you're going to get the plaintiffs' okay or the Court's okay,
16 I'm directing that you do it as a, I mean I wouldn't want you
17 to break up a training manual for the purpose of designating
18 when you could just tell the plaintiffs which parts of the
19 training manual are responsive.

20 So I would designate them as confidential, if the
21 plaintiff finds some that are particularly egregious, although
22 frankly I don't know why any of these things will ultimately
23 be a problem because I don't know that there would be somebody
24 particularly interested in them, but once the plaintiff finds
25 out which ones are responsive, if they think some of the

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2 others shouldn't be designated, then you can bring them back
3 up to me. I'm not going to review them myself, but if you
4 think that they shouldn't be so designated, rather than having
5 you, two, argue over it, we'll skip that step, I'll allow them
6 to designate them as confidential, if you think for some
7 reason they need to be undesignated or they need to be
8 available for some other reason, I'll reconsider that, but in
9 the meantime everything stays confidential if it's training
10 materials.

11 But the main thing is that the plaintiffs will have
12 a specific response to their request such that they can know
13 what it is that's responsive to what they wanted. I mean if
14 that's what they want, that's what they want.

15 MS. DAITZ: Your Honor, I'm just going to ask that
16 with respect to all productions of documents, and that both
17 parties be similarly obligated. I mean, for instance, I got
18 production from plaintiffs on August 31st that just said this
19 is supplementing Yusef Salaam's document production, with now
20 indication as to whether it was responsive to our requests, in
21 support of plaintiffs' defenses, responsive to a subpoena that
22 we served. So if defendants are obligated to parse through
23 productions to identify why we're producing the document, we
24 would just expect the same from all parties.

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 MS. DIPPOLD: I have no problem doing that, your

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2 Honor.

3 THE COURT: I'm glad you don't. Okay. All right,
4 now, and the other issue which was related to that is I
5 understand that the plaintiffs have some materials and the
6 question was whether or not the plaintiffs should produce
7 them, or whether or not the plaintiffs wait and see what you
8 produced, and then produce what's not duplicative.

9 I'm torn on this one because I'm not so sure in the
10 way they're being produced, whether or not the Plaintiffs
11 would be able to make that determination, but in the interest
12 of efficiency, I would like to have the stuff produced from
13 the defendants, have the plaintiffs look at it, and then you
14 can make your determination as to whether or not what you have
15 is coextensive with the defendants.

16 MS. DIPPOLD: We're perfectly willing to do that. If
17 there's anything -- the two volumes are right here, they're
18 the "Criminal Investigation Course," and "Investigators Guide"
19 from particular years. Once we see what the defendants are
20 producing, if there is anything here that they haven't
21 produced to us we'll gladly copy it and give it back, you
22 know, send it to them.

23 THE COURT: Okay, just let me give you the source of
24 my ambivalence, and that is that it seems to me that it may
25 take more work and effort for you to do that than to just

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2 produce, I mean I don't know how many pages that you have, I
3 mean --

4 MS. DIPPOLD: Several hundred.

5 THE COURT: Well, you know, I mean if it's just a
6 question of the cost of reproducing --

7 MS. DAITZ: Your Honor, we could bear the cost of
8 the copying, I don't know that that's the necessary question,
9 it's just that, you know, as I said, we're producing parts of
10 certain manuals and parts of others, and to the extent that
11 they're not identified on their face by date or source, we're
12 providing that information to plaintiffs. But I think it could
13 be extremely arduous of a task for plaintiffs to make a
14 literal line by line comparison of those two manuals with the
15 500 pages of documents that we're producing. And in the
16 interim, your Honor --

17 THE COURT: Okay, other than the potential cost of
18 reproducing, is there any reason that you wouldn't just give
19 that to them?

20 MS. DIPPOLD: Mr. Beldock is suggesting that they
21 should be producing the things that we're asking for, plus if
22 they told me --

23 THE COURT: They're going to produce what you're
24 asking for, that's a different issue, the question is I mean
25 as often happens in cases, from some source or other the

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2 plaintiff may have some incomplete production. What we're
3 talking about now is what you have in your possession, which
4 may not be coextensive to what the defendants are going to be
5 produced, but that's a different issue. What the defendants
6 want is what you have as partials or undesignated, whatever,
7 if they are going to pay for the reproduction, I don't know
8 why you would object to it.

9 MR. BELDOCK: It's not exactly that, I'm responsible
10 for getting these documents in another litigation with the
11 City, they were given to me voluntarily without
12 confidentiality in another litigation with the City, with
13 other attorneys from the City. We've been trying to get
14 training material for a year and a half, we got those training
15 materials very easily from the other counsel.

16 MS. DIPPOLD: From the co-counsel.

17 MR. BELDOCK: From their co-counsel in the other
18 case, but Corporation Counsel was involved in it. We don't
19 understand why they've had such difficulty producing training
20 materials to us, why it's taken a year and a half or us to get
21 them. And at that point, we feel it's only fair that they
22 show us what they have been able to find, that we compare
23 them, and then we will obviously give them what we have gotten
24 elsewhere. It just seems wrong. Maybe I'm not making myself
25 clear to your Honor, but for a year and a half we've been

1 trying to get training material, which in another case I got
2 within a few weeks, if not months, from the City. The City
3 has claimed they couldn't get any training materials or they
4 couldn't find any training materials, there is something about
5 this process which is unfair to us that bothers me.

7 You want us to give them to them now, we'll exchange
8 with them, if necessary.

9 THE COURT: I do, and I want the City do exactly
10 what you say you've been trying to do for a year and a half. I
11 don't disagree with anything you said, and I understand that
12 you each have your interests in doing things, but as I started
13 out saying, it seems to me this is a simple question of you
14 ask for stuff, you get it. I understand that in producing,
15 when we're dealing with producing manuals and things, they're
16 not necessarily easily separable, and it makes more sense to
17 designate them, and whether or not they are going to all be
18 confidential, I don't know why you couldn't agree on that, it
19 seems to me it's a fairly simple thing, I put my imprimatur on
20 it that I would rather have the stuff just be produced, give
21 it to the plaintiffs and let the plaintiffs look at it. And
22 you're obligated to do it, you designate it, I'm more
23 concerned with whether or not what the City produces to you is
24 sufficiently designated so that you can work with it. And if
25 they do that, and they get copies of what you have, which you

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2 say was produced in some other litigation so I'm not even sure
3 why there's an issue about it.

4 MS. DAITZ: Your Honor, I just need to say for the
5 record that outside counsel for the City of New York produced
6 the training materials in the case that Mr. Beldock is
7 referring to. And I don't think that that necessarily bears
8 upon our ability to retrieve responsive documents from our
9 clients in this case.

10 But aside from that, I think what we all want to do
11 is move forward with the deposition that's been on hold
12 pending the production of training materials, and the City is
13 prepared to make the production under your Honor's ruling by
14 tomorrow, and assuming we can get the materials that are in
15 plaintiffs' possession so that we have an opportunity to
16 review them.

17 I mean if we proceed with depositions while they're
18 still doing this line by line comparison --

19 THE COURT: Okay, you understand right now that's
20 the process, so you're arguing what I've already --

21 MS. DAITZ: I'm sorry, I was unclear, your Honor.

22 MR. BELDOCK: We're prepared to exchange, your
23 Honor, but we don't want the City to have our documents before
24 they give us their documents. I know I'm sounding, I may
25 sound a little --

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2 THE COURT: You object to the exchange?

3 MS. DAITZ: No, your Honor, they'll have them
4 tomorrow.

5 THE COURT: Okay.

6 MS. DAITZ: And we can send one messenger to
7 Beldock, Levine and Hoffman to drop off our production and to
8 pick up theirs.

9 THE COURT: You want them to meet midway like at a
10 court someplace? Okay, I understand your frustration, Mr.
11 Beldock, you've been asking for this for a year and a half,
12 you should get it, and you will get it.

13 MR. BELDOCK: And why couldn't we get it right away?
14 Why have we been delayed and having to do witnesses without
15 that training material? It's an issue that I just want on the
16 record, we'll take it up later if necessary.

17 MS. DAITZ: I need to also note for the record, your
18 Honor, that the defendants interposed valid objections to
19 plaintiffs' discovery requests, we did not receive a
20 deficiency letter, it was not brought to our attention that
21 they (indiscernible) our objection until at deposition, you
22 know, ten months later where he renewed their request.

23 So I think it's not just that defendant should have
24 produced documents immediately, if there was some dispute as
25 to the nature of the request or the nature of the objection,

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2 it was incumbent upon plaintiffs to bring it to our attention
3 to facilitate that production sooner than what ended up --

4 THE COURT: Okay, all I'll say is this. All right,
5 I understand that we've had some stops and starts in this, but
6 at least I hope you understand if you bring it to my attention
7 I will decide it. And I looked at the correspondence, I
8 noticed sometimes when you are dealing with multiple people on
9 the side that causes issues, but I will say that Mr. Beldock
10 is correct that this is something that should have been
11 resolved a while ago.

12 It is not my habit to say what went wrong in the
13 past, what I like to do is to make sure we go forward, okay.
14 And as I see it, I expect the City to produce the documents
15 and designate them so that the plaintiffs can work with them,
16 and I expect that the plaintiffs will produce to the City
17 whatever documents they have that are related to the same
18 issue.

19 Is there any question about where I stand on this?
20 And again, I'm not going to try to reconstruct everything
21 that's gone wrong in the past. I know that we've had some
22 missteps, but at least I'm trying to get us now on the right
23 track. Let's hope that, and if anything else comes up, and if
24 there are any issues with this production I expect, I'm sure I
25 will hear about it. The only, my biggest concern so that

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2 you'll know is that this is my law clerk's last week, so some
3 other law clerk will come in and will not understand the
4 extent of the task on which they are about to undertake. I'm
5 not sure when I hired them I made it clear what the
6 responsibilities were. So, you know, I just want to make sure
7 they don't quit after a week.

8 But the basic thing is, look, somebody asked for
9 some documents in discovery, there's supposed to be some
10 dialog between the parties, if it doesn't work, you bring it
11 to me and it took more time than it had to, perhaps the
12 plaintiffs were more solicitous than they should have been,
13 maybe they should have brought it as soon as they weren't
14 getting what they thought they should have gotten. I'm not
15 going to blame them for that because I do like people to try
16 to work things out. But they're right and they should have
17 gotten it.

18 I understand the concern you have. Again, I don't
19 think it makes sense to try to take parts of manuals or other
20 kinds of materials and parse them out. I hope now we've worked
21 out the confidentiality issue, and I don't think it's as
22 simple as just telling, okay, here's the plaintiff, and you
23 work it out and tell us what's not right. But I do think that
24 once the plaintiff knows what it is that they have, what's
25 responsive to their request, they may, in fact, find that some

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2 of the things maybe shouldn't be confidential and maybe
3 they'll decide they don't want to make an issue of it. Because
4 unless until they want to do anything with it, there's no
5 problem with keeping it confidential anyway.

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So any other questions?

7

MS. DAITZ: Your Honor, I have a separate issue with
8 your Honor's --

9

THE COURT: Broached already with the plaintiff?

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MS. DAITZ: Yes, actually I -- oh, Ms. Boshnack is

here.

12 THE COURT: Did this come up in the last five hours,
13 what?

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MS. DAITZ: No, your Honor, actually it came up back
15 in May, defendants had requested, initially we requested tax
16 returns from the plaintiffs, first we went to their economic
17 damages claims. The parties all reached an agreement that the
18 plaintiffs would instead produce, at least at this time,
19 releases for a particular type of tax document that is not
20 actually the full return, and all the plaintiffs have provided
21 them to defendants on a rolling basis, except for two
22 plaintiffs, Daniel Wise and Victor Wise. And Ms. Boshnack
23 informed me by email this morning that she now has Victor
24 Wise's releases, and that we would like to make a formal
25 application to compel those releases from plaintiff, Daniel

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2 Wise, which it's my understanding Ms. Boshnack doesn't
3 actually object to.

4 MS. BOSHNACK: We've been trying to get him to sign
5 off on them and send them to us, and --

6 THE COURT: You want the defendants to compel your
7 client because you can't get stuff from your client, is that
8 what I'm hearing?

9 MS. BOSHNACK: I'm okay with having the order to
10 compel him to do it.

11 THE COURT: I'm not so sure that that's what the
12 motion to compel is designed to do. Is there something I
13 should be aware of, should I --

14 MS. BOSHNACK: Just so that he understands that it
15 is something that he is required to comply with if he wants to
16 be able to have that portion of his damages attached to his
17 claim.

18 THE COURT: Okay, it's just that I'm sitting here
19 wondering if I get a motion to compel from the Corp Counsel,
20 what kind of response am I going to get from the plaintiff?

21 MS. DAITZ: Hopefully it will be production of the
22 document.

23 THE COURT: Okay. Well, what I mean is this could
24 take some time unless what I get from the plaintiff is
25 something which short circuits the whole idea of briefing and

1 the motions. Because if the idea is we want the plaintiff to
2 understand and comply, is this the best we can come up with, a
3 motion to compel?

5 MS. BOSHNACK: Or I can convey to him that it was
6 discussed in court and if he doesn't comply there will be a
7 motion to compel or he'll be forfeiting that portion of his
8 claim, and perhaps that's a better way to go about it if --

9 THE COURT: Because I don't want this, I mean there
10 are motions to compel and there are arguments on the other
11 side. If we just have a recalcitrant person, and they don't
12 want to produce documents, and they don't understand the
13 seriousness of the request, then if they file a motion I don't
14 know that there is any response on the other side. So you can
15 tell your client that if the Corp Counsel has to file a motion
16 that might be too late for this process.

17 MS. BOSHNACK: Okay, that's what I'll do then.

18 MS. DAITZ: Your Honor, we would just like a date
19 certain since we have been having this discussion since May
20 and the delay in getting us these releases and then, you know,
21 at no fault of any of the parties, certainly the IRS is not
22 prompt in forwarding its responses to the subpoenas with the
23 release --

24 THE COURT: Actually, now that I think about it, I
25 don't know that we need a formal motion to compel, is there

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2 any reason that the information should not be produced, do you
3 believe that it's not relevant, counsel?

4 MS. BOSHNACK: The only way it would not be relevant
5 is if he is not claiming those damaged, and unfortunately we
6 haven't been able to get that confirmation from him as to
7 whether or not --

8 THE COURT: Perhaps what we ought to do is we should
9 just do an order directing him to produce it, give you
10 something to do in your waning hours. We'll set a time limit.
11 How is the communication with your client I was just trying to
12 see what would be a reasonable timeframe? If you got an order
13 --

14 MS. BOSHNACK: What I'll do is I'll send it to him
15 by regular and certified mail, obviously I'll also try to
16 contact him by telephone, however, it's difficult to get in
17 contact with him. He lives in the same house as Delores Wise,
18 who is no longer represented by our firm, and so --

19 THE COURT: My question is, let me put this more
20 precisely, is two weeks too short a time, given --

21 MS. BOSHNACK: For the mail to arrive, I'll send it,
22 I can send the letter to him today or tomorrow, it will be
23 there by next week.

24 THE COURT: Okay, well we'll get the order out today
25 and you'll get --

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2 MS. BOSHNACK: So as soon as I get the copy of the
3 order I'll send that out with a --

4 THE COURT: Okay, we'll make it two weeks from
5 tomorrow.

6 MS. DAITZ: Thank you, your Honor, and with respect
7 --

8 THE COURT: And that's, who is this going to be now?

9 MS. BOSHNACK: It's for Daniel Wise.

10 THE COURT: Daniel Wise, and you're satisfied you
11 have the other or did you get it already?

12 MS. BOSHNACK: And I will bring over Victor Wise's
13 either later today or tomorrow.

14 THE COURT: All right, we'll do an order on Daniel
15 Wise. Anything else?

16 MS. DAITZ: Yes, your Honor, with respect to the
17 plaintiff, Delores Wise, we just want it to be put on the
18 record that we have been cc-ing her on all correspondence
19 between the parties as a plaintiff pro se, and we did advise
20 her in writing of this conference today, I don't believe she
21 has appeared. And, as well, your Honor, we have requested that
22 she appear for her continuing deposition on September 27th and
23 that she confirm her attendance by the end of this week, but
24 we haven't heard any response to that request yet.

25 THE COURT: All right, thank you, anything else?

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2 MR. WARREN: Yes, your Honor.

3 THE COURT: Mr. Warren.

4 MR. WARREN: Yes. Your Honor, I was elected to
5 represent or to depose Officer Reynolds in this case, and
6 Officer Reynolds is not a named party, but he's a third party
7 witness. But he's a third party witness who had substantial
8 contact and, in fact, was involved in substantial interaction
9 in this case, not only involving the arrest of some of the
10 people who were arrested, our plaintiffs, but also in terms of
11 the activities that occurred within the Central Park precinct,
12 itself.

13 He, for example, was part of two -- of two
14 interviews that were conducted of witnesses in the Central
15 Park precinct and was there at the time that Kevin Richardson
16 was there, and was present with a detail of police officers
17 that went to pick up Antron McCray. And during the deposition
18 at some point near the end of the day, I became aware of
19 certain communications that were made by Officer Reynolds,
20 Detective Reynolds, to a blog which was a *Daily News* blog, in
21 fact, it was a public blog. And I noted that in those
22 communications he made references to defendants as being
23 mutts, and, of course, I couldn't help from recalling the same
24 characterization made by Detective McKenna in this case, who
25 is a defendant in this case, in his book, in which he defined

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2 our clients as being mutts.

3 He also in his communications referred to gang of
4 thugs, police wolf pack, chasing prey. He made negative
5 characterizations about 100 Blacks In Law Enforcement, and he
6 also made a statement in one of these communications about,
7 about his belief that in spite of the convictions being
8 vacated against our clients, that they were still guilty, that
9 they were not innocent, they were still guilty.

10 And I think that, and, of course, let me just go on
11 further, I made an application to question him, naturally,
12 about whether, in fact, he was the author of the
13 communications that were a part of this blog, and immediately
14 Mr. Myerberg, who was representing him, the City represents
15 him, notwithstanding his third party status, Mr. Myerberg
16 refused or instructed him not to answer the questions.

17 Now, we would have, or I would have made an attempt
18 to get a legal ruling at that time, and the only reason I did
19 not is because of the lateness of the hour and the time that
20 was allotted us or myself in terms of the total time for the
21 deposition. And, of course, I didn't want to disturb your
22 Honor at that time, but secondly we wanted to, in good faith
23 we wanted to legitimately research the issue so that we could
24 determine whether, in fact, the objection was unfounded. And
25 in fact, we believe the objection is unfounded, there are a

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2 few cases which are cited in a correspondence of July 22nd that
3 was sent to your Honor, and in those cases, those three cases
4 or so, it specifically indicates that discovery, whenever the
5 issue of relevancy is at hand, that discovery is broader than
6 admissibility. And, in fact, these issues are relevant.

7 I am seeking from your Honor, most respectfully, to
8 have this deposition reopened so that I can ask the vital
9 questions of Detective Reynolds whether, in fact, it's a
10 threshold question, you were the author of these
11 communications, which we firmly believe that he was. And
12 secondly, to ask other questions relating to those
13 communications, and perhaps other communications that have a
14 direct impact and effect on his credibility. And should there
15 be a trial in this case, then obviously those issues would be
16 gone into if he were on the stand and testifying as a witness.
17 And certainly I would like to be able to ask those questions
18 and continue to ask about those issues during the deposition.

19 If your Honor would indulge me for one second,
20 please. Also, your Honor, Mr. Beldock advised me that we have
21 the same problem with Officer Weir in terms of not being
22 allowed to go into IAB complaints. We believe that we should
23 be able to go into IAB complaints, anything that affects the
24 credibility of these officers. And, in fact --

25 THE COURT: Is that also one that's already taken

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2 place?

3 MR. WARREN: Yes. Yes. And, in fact, during the,
4 now that I recall, during the depositions of Officer,
5 Detective Reynolds, there are certain things that came out
6 during the initial part of the deposition, questions that I,
7 threshold questions that I raised, that ultimately resulted in
8 the revelation that he was facing or had faced certain
9 lawsuits, several lawsuits during the course of his career.
10 And I would like to be able to go more deeply into that area,
11 and one of those instances, one of the individuals who was
12 arrested in a case that he was involved in had been shot and
13 was in the hospital, and was in intensive care unit, and he
14 was sued because he, the man needed oxygen and he pulled the
15 oxygen mask off of his face in an attempt to do whatever. I
16 was not allowed to get further into that area. But it's these
17 type of inquiries that I think are legitimate inquiries. I
18 would like for your Honor to make a ruling. They're not simply
19 third party witnesses and even if they were third witnesses we
20 contend that we have a right to deal with their credibility,
21 and but this Officer Reynolds, Detective Reynolds is more than
22 a third party witness for the reasons that I've just
23 discussed.

24 THE COURT: I get the gist of what you're saying,
25 who wants to --

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2 MR. BELDOCK: Also civilian complaints, as well, Mr.
3 Beldock.

4 THE COURT: Who wants to tell me the other side of
5 the story.

6 MR. DEPAUL: Yes, your Honor, Philip DePaul. If I
7 could just, for your Honor, bring in a little bit of content.
8 These questions that were raised in the July 22nd letter of Mr.
9 Beldock, refer to a message board, comments on a message board
10 that Mr. Warren intends to ask Detective Reynolds.

11 He marked a ten-page document as an exhibit and then
12 attempted to ask questions about that document. The comments
13 in that document refer to the Sean Bell matter, an incident
14 that is unrelated to this case, that occurred 17 years after
15 the incident that's the facts and circumstances of this
16 lawsuit.

17 Mr. Myerberg who was counsel at the time, directed
18 Mr. Reynolds not to answer the question, not on the basis of
19 relevance, but on the basis of it being harassment. Simply
20 put, the questions don't go to Officer Reynolds' credibility,
21 they go to harassment. They are basically questions of giving
22 him to give opinion on a racially charged case, or asking his
23 opinion on African-American people, in general, it didn't go
24 to this credibility.

25 THE COURT: You don't think that those issues that

1 you just mentioned, one's thoughts about racially charged
2 cases and the African-American community would be relevant

4 MR. DEPAUL: No, your Honor, it's -- one brief
5 moment, your Honor. Your Honor, again, it's not relevant, it
6 goes to the harassment of a witness about his opinions on a
7 case that occurred 17 years after the incidents in this
8 matter.

12 MR. DEPAUL: Your Honor, I'm not sure, but --

13 THE COURT: I think you answered the question then
14 didn't you?

15 MR. DEPAUL: What?

16 THE COURT: I mean, first of all, the direction not
17 to answer a question, you really have to have it on, you know,
18 it's very solid, I mean it don't think it was designed to make
19 a motion. And the question of one's credibility and the issues
20 that are swirling around in this case, certainly are, one can
21 argue about what is and what is not relevant. It seems to me
22 the question about what you can ask a witness in that regard
23 in terms of his views, actually I'm not sure when or if they
24 ever lose their relevance.

25 MR. DEPAUL: Additionally, your Honor, my colleague,

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2 Mr. Myerberg, attempted to raise this issue with the Court at
3 that time, many times in fact, at the deposition. Mr. Warren
4 replied he was going to reserve his rights on the issue. So
5 while we attempted to raise the issue with the Court to
6 resolve it at the deposition, plaintiffs' counsel decided that
7 they didn't want to, and then for over an hour played 911
8 calls. So it was -- it was our position at the time that we
9 could have resolved this --

10 THE COURT: Right, and you could have,
11 notwithstanding whatever Mr. Warren did, you could have raised
12 it with me, or he could have. I mean was there a direction to
13 the witness not to answer?

14 MR. DEPAUL: Correct, your Honor.

15 THE COURT: Once there's a direction to the witness
16 not to answer, you have it in your power to contact me,
17 regardless of what Mr. Warren does.

18 MS. NELSON: Well, your Honor, we did suggest that
19 several times to plaintiffs' counsel, we were at their
20 offices, their phones, they continued with the deposition. I
21 don't know that there was anything more for us to do barring a
22 ruling from your Honor.

23 THE COURT: Well, I understand that, I like people
24 to be civil, but as a legal matter, at that point you could
25 have said we're stopping the deposition and we're going to get

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2 a ruling from the Court.

3 MS. NELSON: I agree, your Honor, but as your Honor
4 has pointed out to us on several occasions, that is not the
5 alternative that you would prefer.

6 THE COURT: That's correct.

7 MS. NELSON: What we did was we put plaintiff on
8 notice as to our objection, we had the witness not answer that
9 question, and we moved forward at plaintiffs' preference. We
10 shouldn't now be penalized that we didn't call your Honor
11 because plaintiffs didn't want it. We certainly made our
12 objection known for the record, we've made it known to
13 plaintiffs several times.

14 THE COURT: Well what does the record show at that
15 point, does the plaintiff say, okay, everything is fine, or
16 does he say --

17 MS. NELSON: No, what the record shows, your Honor,
18 is that plaintiff said we have other matters we would like to
19 go through, let's go through them. They came back to the issue
20 again, Mr. Myerberg raised his objection again, and that
21 deposition ended without calling your Honor. And if I remember
22 correctly we were still within our seven hours, so we didn't
23 even raise that objection as a reason not to call your Honor.

24 MR. WARREN: Your Honor, I think that Ms. Nelson
25 would have to agree that we all agreed at the eleventh hour

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2 that these issues would be collectively raised, as I
3 understand it. And again, you know, there were, these issues
4 were always on the table, and certainly it became aggravated
5 at the eleventh hour when we became aware of the transmission
6 to the --

7 MS. NELSON: Whoa, whoa, I'm not sure what the
8 eleventh hour is you're talking about, it certainly wasn't
9 late night, and we were again still within our seven hours,
10 and I won't agree with Mr. Warren, Mr. Moore on several
11 occasions stopped the deposition over our objection not to
12 answer a question, and called your Honor. The issue got
13 resolved, the deposition continued, you know, consistent with
14 your Honor's ruling.

15 And I just want to point out that during the
16 Reynolds deposition, at one of those times, we did raise the
17 objection and asked -- an instructed the plaintiff not to
18 answer it. That was a 5:20, pursuant to Mr. Fisher. Mr.
19 Warren said we're not going to deal with this now, we're going
20 to deal with it at the end of day, but not now, that was at
21 5:20, and by the end of the day we thought he was going to
22 call the Court.

23 How this ended was we objected, we put our objection
24 on the record, Mr. Warren ended the deposition and we left.

25 MR. WARREN: Judge, that is not true. The --

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2 MS. NELSON: But the record will --

3 THE COURT: Counsel, counsel --

4 MS. NELSON: My apologies, your Honor.

5 THE COURT: Okay. I'm, you knew where I was going
6 on this?

7 MS. NELSON: Yes, your Honor, I apologize.

8 THE COURT: All right.

9 MR. WARREN: Judge, first of all, it not only
10 applies to Detective Reynolds, it also applies to Officer
11 Weir, as well. And at 5:20, I think the deposition ended at
12 approximately 7:00, and we indicated once we became aware that
13 there were other issues, that we would make these issues
14 available by way of argument and that was in the letter that
15 was sent from Mr. Beldock, at the appropriate time. Because
16 given the fact that it had arrived 7:00 at the end of the day,
17 that was, the time was about expired, and we felt that on that
18 basis it wasn't appropriate to contact the Court at that time.

19 THE COURT: Okay, before you continue with this,
20 before you continue with the procedural issue, let's deal with
21 the substance of this. And the substance is this, okay, if you
22 had these witnesses on the stand and the question came up as
23 to whether or not they had been involved in these blogs, do
24 you think the Judge would let that question come in?

25 MS. DAITZ: Your Honor, if I may, I'm sorry, Mr.

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2 DePaul, I would like to address that issue. I think the answer
3 is not only no, but in this particular case, you know, there
4 are hundreds of racially charged incidents in this City,
5 particularly in the past 20 years. And to allow plaintiffs,
6 with every single nonparty witness, when we're already talking
7 over sever hours per deposition, to inquire about each
8 witness' opinion as to each and every racially charged case,
9 in the hopes that a witness might say something like, you
10 know, I thought the officers' actions in the Sean Bell case
11 were justified --

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THE COURT: Okay, just before you continue with
13 this, I will make it clear to you that I would never let a
14 lawyer just ask a question out of the dark, that is just say,
15 okay, what's your opinion on this. If a lawyer wants to ask a
16 question, the first thing I'm going to ask him is do you have
17 a good faith basis for believing that there is something here,
18 and what Mr. Warren has told me is not just that he's asking
19 people, okay, what's your view on the Sean Bell case, it's
20 that you've written some very incendiary things, did you write
21 this stuff? Or there are some very incendiary things written
22 about this case, which was a racially charged case, which one
23 could argue might have some implications for how someone acted
24 in a racially charged case which they have very strong
25 feelings about.

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2 Given that premise, given that intro, that's not a
3 fishing expedition, that's trying to find out whether or not
4 this person has some views which might affect how they would
5 react in a certain kind of situation. I don't see this as, you
6 know, just asking every witness what their views are.

7 MS. NELSON: Except that wasn't the foundation that
8 was laid, your Honor, Mr. Warren showed the witness and
9 exhibit, we read it, the witness read it, I think both Mr.
10 Myerberg and I went on the record to ask Mr. Warren if he
11 actually intended to ask questions about a blog concerning
12 Sean Bell, he said yes. He gave no other explanation.

13 If that is all, if we have a bare bones foundation,
14 other than what your Honor just gave us, we had not other
15 reason to believe that we should not instruct the witness not
16 to answer those questions. Mr. Warren did not lay that kind
17 of foundation. I'm sure it is in their application to the
18 Court, but that was not the circumstances under which we
19 objected to the questions at the deposition.

20 MR. WARREN: Judge, most respectfully, the whole
21 purpose in conducting a deposition is to establish if you have
22 a reasonable basis that you believe supports asking a
23 question, it's to ask questions that are relevant for purposes
24 of further down the road being in a position, depending on the
25 response, to enlarge on that question and ask the same

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2 question in the trial.

3 THE COURT: Before we get too much into philosophy,
4 what was the specific question that was asked that resulted in
5 the direction not to answer?

6 MS. NELSON: We'll find it, your Honor.

7 MR. WARREN: As I recall, the question was whether,
8 in fact, Officer Reynolds or Detective Reynolds, was the
9 author of that blog.

10 MS. NELSON: Actually --

11 MR. WARREN: Or the communications in the blog, I'm
12 sorry.

13 MS. NELSON: I believe there was a question about
14 whether or not Officer Reynolds created any blogs with
15 internet postings, then he answered those questions, and then
16 the reason for the objection though was have you ever made any
17 comments on any publication concerning the Sean Bell case?

18 THE COURT: Okay, so that was the question?

19 MS. NELSON: That was the question that led to --
20 that was the question that led to the objection. He certainly,
21 he answered the questions, your Honor, as to whether he ever
22 made any publications on any blogs or internet posts.

23 MS. DAITZ: Also, your Honor, just reading from the
24 record, would point out that the defense counsel, Mr.
25 Myerberg, inquired of Mr. Warren as to what the relevance of

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2 the line of questioning was prior to instructing the witness
3 not to answer, and the only response was credibility. And Mr.
4 Myerberg explained that the witness was a nonparty, and that
5 he, having reviewed the blog entry about the Sean Bell case,
6 did not believe it to be an appropriate area of inquiry. And
7 Mr. Warren simply said we are going to reserve our right.

8 There's no other statement on the record explaining, as
9 thoroughly as plaintiffs did in their subsequent letter
10 application, what the basis for their questioning was, and
11 what the good faith basis was for pursuing that line of
12 inquiry.

13 THE COURT: And this, you keep referring to it as a
14 third party, is this person a potential witness?

15 MS. DAITZ: He is a witness, he's a nonparty.

16 THE COURT: He's a nonparty witness.

17 MS. DAITZ: He's a nonparty witness, yes, your
18 Honor.

19 THE COURT: Okay.

20 MS. DAITZ: He was the arresting officer of certain
21 of the people in the park.

22 THE COURT: And so just to be clear, as I understand
23 it, the question here is whether to reopen this deposition for
24 this line of inquiry, that's it, right?

25 MR. WARREN: That's correct.

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2 THE COURT: Okay. Now what did you want to add?

3 MR. WARREN: No, as I said, there is a connection in
4 terms of one of the terminologies that was used by Detective
5 Reynolds, mutts, that was also used in public record in a book
6 that as written by one of the defendants in this case, who
7 worked with Detective Reynolds on this case, and that was
8 Detective McKenna. And, of course, these are not questions
9 that are simply asked out of a vacuum or asked harass, that's
10 simply not the way we operate.

11 We had a basis for asking good faith questions, we
12 would still like to and I would still like to expand on those
13 questions and reopen this deposition, not only as it relates
14 to his communications in a public blog that had what I
15 considered to be significant relevance to this case, and his
16 testimony as a witness in this case, but also, as I said
17 before, questions relating to CCRB complaints against him, IAB
18 complaints against him, the lawsuits against him. All these
19 things are relevant in terms of his credibility as a witness.
20 I mean counsel can't have it both --

21 THE COURT: I'm sorry, and you didn't ask those
22 either?

23 MR. WARREN: We asked -- we asked some of them
24 initially, but we were not allowed to expand on them at an
25 point later on. And we decided that at the, when the

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2 questions arose concerning the communications to the blog,
3 that we would raise all of these issues, especially since
4 Officer Weir was in a similar situation in terms of us not
5 being allowed to inquire into IAB complaints, that we would
6 raise all of these matters to the Court in a logical way in
7 the communication and have a hearing on the matter so the
8 Court could make a ruling. And Mr. Beldock can --

9 THE COURT: But I guess, but Ms. Nelson is right
10 though, other than saying credibility, you didn't really give
11 your full theory of why this was relevant.

12 MR. WARREN: Well, I indicated that, I thought I had
13 indicated, I don't have a copy of the transcript with me, but
14 I thought I had indicated that the relevancy related to his
15 credibility as a witness in this case, and if he were called
16 as a witness at a trial, that then credibility would be a
17 relevant issue. I don't remember the exact context, but
18 certainly it is relevant, your Honor.

19 And that is the issue that is before us today. It is

20 --

21 THE COURT: And who's the other witness?

22 MS. NELSON: Weir.

23 MR. BELDOCK: It was also James Weir, whose
24 deposition I took, your Honor, but it's all, this discussion
25 applies to all of the third party witnesses, police witnesses,

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2 third party witnesses who are former police officers involved
3 in this case. We have been faced with the blanket objection in
4 the Weir case, and in the Reynolds matter, by the Corporation
5 Counsel, that they're third party witnesses so we can't go
6 into credibility issues of this nature.

7 Now I just want to point out to your Honor that we
8 didn't, we came upon this blog information quite close into,
9 if not the day before the Reynolds deposition. One of the most
10 key items on the blog we didn't discover till after the
11 Reynolds deposition. These items should have been given to us
12 in the first place, because that key item had to do with very
13 case. And one of those, that internet -- that internet item
14 had to do with his report to the public, to the people on his
15 blog, about the arrests he made in this case, and what he
16 considered about the defendants.

17 So this is not a singular issue, this is an across
18 the board issue, and there is no way we should be prevented
19 from asking them questions of this nature because they're
20 third party witnesses. And what's more, they have asked the
21 same questions --

22 THE COURT: Counsel, counsel, counsel, counsel --

23 MR. BELDOCK: They have asked all kinds of questions
24 of the same nature of our witnesses and of other witnesses.

25 THE COURT: Mr. Beldock, I have heard enough. Okay,

1 with respect to the issue, and I think I understand the issue
2 now and I understand eh defendant's objections and the
3 question of whether or not the inquiry concerning attitudes
4 that the witnesses may have is either too attenuated in terms
5 of time or circumstance. I find that the inquiry is relevant,
6 and my only issue, frankly, is whether or not it's generically
7 relevant or that there is some basis for the inquiry. And
8 while I would have, I think it would have been cleaner if the
9 dialog between counsel had made clear what was going on, I
10 understand that there was always some hesitancy on the part of
11 counsel to have a colloquy and then reveal what it is that
12 they want to ask questions about.

14 But it does seem to me that to the extent that there
15 are blogs where people are expressing opinions concerning what
16 have been termed by the parties racially charged incidents,
17 that goes beyond just somebody's personal opinions. And to the
18 extent that any witness has opined in public concerning these
19 kinds of issues, I think that's fair inquiry.

20 That deposition, the Reynolds deposition, will be
21 reopened on a limited basis to inquire about the blog. Yes,
22 Ms. Daitz?

23 MS. DAITZ: Your Honor, given that the witness is a
24 retire from the NYPD, and nonparty, and he has subsequent
25 employment, we would request that the questions be, or the

1 deposition be reopened via a deposition upon written
2 questions, to see if there really is any need to bring back
3 this witness for an entirely new deposition for this limited
4 line of inquiry.

5 THE COURT: All right, are you saying -- well,
6 before you make that application, show me you cannot
7 accommodate this within the framework of a regular deposition.
8 We're only talking about an hour here, or so, I mean I don't
9 know.

10 MS. DAITZ: Well, your Honor --

11 THE COURT: I don't expect this, well, first of all,
12 I don't expect this to be more than part of a day. Are you
13 trying to tell me something different, Mr. Warren?

14 MR. WARREN: Not at all, Judge. I try to be very
15 frugal with time and I like to deal with the issues as they
16 are significant. So I don't intend to waste time here. I mean
17 if there is something there, it won't be an all day
18 deposition, I can tell you that. It won't be an all day --

19 THE COURT: The bottom line is this --

20 MR. WARREN: It won't be that.

21 THE COURT: All right. If you, before you request a
22 deposition on written questions, which I think, I mean, look,
23 they're just not the same as a regular deposition. So if you,
24 if there is some problem, you said, is he retired?

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2 MS. NELSON: He is retired, your Honor, from the
3 police department.

4 THE COURT: Does he live in New York? Does he live
5 in New York?

6 MR. WARREN: He lives in New York, he's in, as I
7 recall, he said he was in real estate, he lives in the city,
8 he has no problems getting to a deposition --

9 MS. NELSON: I'm not sure if that question was
10 asked, but fine.

11 THE COURT: Look, if you want to make that
12 application, give me something more than just the idea that
13 he's a third party and --

14 MR. WARREN: Well, your Honor, I will say that he,
15 during the deposition, one of the questions I asked him was
16 how many times did he meet with Corporation Counsel, at least
17 ten --

18 THE COURT: You know, of course, at this point
19 you're winning this issue, so I'm not sure --

20 MR. WARREN: I understand.

21 MS. NELSON: Your Honor, I just want to clarify so
22 we all understand, the deposition is being reopened so that
23 Officer Reynolds can answer questions regarding the blog that
24 was marked as Exhibit 9 at the deposition?

25 THE COURT: Well, I guess that depends on where it

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2 leads --

3 MR. WARREN: Judge, I'm also seeking one other area
4 that I've elaborated on.

5 THE COURT: So it's a good thing that she asked the
6 question.

7 MR. WARREN: Judge, no, but we've already talked
8 about this, the disciplinary matters, the lawsuits, these are
9 extremely critical in terms of the credibility --

10 THE COURT: Now you said you had asked some
11 questions along those lines?

12 MR. WARREN: Some questions, but I wasn't able to
13 really expand.

14 THE COURT: When you say -- I'm sorry, when you say
15 you weren't able to expand, what does that mean, you were
16 prevented or?

17 MR. WARREN: Yes.

18 MS. NELSON: No. Let me just say --

19 THE COURT: Okay, Mr. Warren.

20 MS. NELSON: Mr. Warren.

21 THE COURT: Don't do that.

22 MS. NELSON: Your Honor, Officer Reynolds was asked
23 about prior lawsuits, he answered all of those questions, Mr.
24 Warren moved on. According to Mr. Warren's statement in
25 court, is that he didn't get a chance to go back and ask more

1 questions. That is not what we should be reopening the
2 deposition for. He asked those questions, he ended that line
3 of questioning, and he moved on to something else. Now in
4 retrospect he wants to go back and he wants to ask further
5 questions. I don't believe that the Court should allow him to
6 reopen the deposition to be able to do that.

8 MR. WARREN: Your Honor, there were certain areas
9 that I attempted to inquire in, although certain answers were
10 provided, and I distinctly remember Mr. Myerberg instructing
11 him not to answer because he considered the answer to those
12 question to be, or those questions, themselves, to be
13 irrelevant.

14 And, your Honor, I think that again, that the, for
15 example, CCRB complaints, whether they were founded,
16 substantiated, IAB complaints, the fact -- I'm sorry, go
17 ahead.

18 THE COURT: Mr. Warren, I do not disagree with you;
19 however, I am not going to reopen the deposition for stuff
20 that you had an opportunity to inquire and then you stopped on
21 your own accord. If you want anything beyond what I've just
22 ordered with respect to the blog --

23 MR. WARREN: Yes.

24 THE COURT: You show me in the deposition where you
25 were prevented from asking.

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2 MR. WARREN: Yes.

3 THE COURT: If you make that showing, we'll consider
4 it. But this is not for you to get a second bite at the apple
5 for things that you didn't go into in the detail that you
6 would have liked or in retrospect you said, oh, maybe I should
7 have asked this question. Only if you, if you can demonstrate
8 to me that you were not allowed to explore those issues fully,
9 that would be the initial showing. And then if you were
10 prevented from asking, and I don't mean where counsel in a
11 colloquy said, okay, I think that's enough, then we'll deal
12 with the blog. Other than that, let's see what you've got for
13 me.

14 MS. NELSON: One separate issue, from my
15 understanding, Mr. Warren brought up three, which is the blog,
16 the lawsuits and --

17 THE COURT: The CCRB.

18 MS. NELSON: The CCRB, and I believe Mr. Beldock
19 also said Civilian Complaint histories. We've always put our
20 objection on the record, actually very similar to what Mr.
21 Warren is now asking for, which is substantiate/
22 unsubstantiated, you've also added, of a similar nature, and
23 we've allowed every single witness, including the nonparty
24 witness, to answer that question.

25 We phrase our objection based on previous rulings

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2 that are published by your Honor, with respect to the
3 production of CCRB and IAB disciplinary information. Apart
4 from those objections, substantiated/unsubstantiated of a
5 similar nature, we've allowed our witnesses to answer the
6 question, and we certainly allowed Eric Reynolds to answer in
7 this case.

8 So to have him go back again and revisit that issue,
9 again, I think Mr. Warren has figured out in retrospect that
10 there are other questions that he wants to ask, that weren't
11 asked at the deposition. And that he had the opportunity to
12 ask the deposition.

13 THE COURT: So that all the parties will understand,
14 that will be the basic inquiry, from my point of view.

15 MR. BELDOCK: Let me just read something that's very
16 pertinent.

17 THE COURT: Yes.

18 MR. BELDOCK: Because Ms. Nelson's memory is wrong.

19 MS. NELSON: Okay.

20 MR. BELDOCK: As I wrote in my letter or July 22nd to
21 your Honor: "On Tuesday of this week in the course of my
22 deposing former Officer Seamus Weir, Assistant Corporation
23 Counsel Elizabeth Dollin objected to my asking if there were
24 ever any civilian or IAB complaints made against him, and
25 whether he was ever disciplined as a police officer. Ms.

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2 Dollin would not let him answer on the grounds that he was a
3 nonparty witness. This relates to my previous statement that
4 this is a universal problem we have, and Ms. Nelson is simply
5 wrong in her memory, and they are blocking us from asking
6 questions that should be easily allowed and should not be
7 blocked. That point is quite significant, because it doesn't
8 have to do just with Reynolds and Weir --

9

MR. WARREN: That's right.

10

MR. BELDOCK: It has to do with the next ten
11 depositions we're taking.

12

MS. NELSON: Let me just say, your Honor, we've
13 taken about between 20 and 30 of these depositions, we put the
14 same objection on the record every time, more or less, I've
15 been to every one of them. And we have allowed the witness to
16 answer every time. I think it is well past the time for
17 plaintiff to raise this objection, if they want to raise this
18 objection. And like I said, we base our objection on your
19 Honor's previous rulings on this issue.

20

The only thing we have asked is that the questions
21 be limited to a similar nature as the claims in this case --

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MR. BELDOCK: Judge, what I just put in shows that
23 she's wrong.

24

THE COURT: Okay, counsel, I --

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MR. BELDOCK: She's wrong though.

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2 THE COURT: If there's -- if there is an issue of
3 witnesses being directed not to answer, and I don't mean just
4 objections, okay, then, you know, by all means bring those to
5 me. I mean I would prefer that lawyers not object, but there
6 is a difference between saying that you object to a question
7 and directing the witness not to answer. Because I get these
8 all the time, some lawyer says I object, then the lawyers says
9 are you going to direct him not to answer, and he says no.

10

If you're telling me that you are asking questions
concerning prior incidents about an officer and there was an
objection, you'll have to point it out to me.

13

MR. BELDOCK: I mean but that's what I pointed out
in my letter. That was one of the bases for this application,
I'm pointing out, I specifically pointed out that Ms. Dollin
prevented me from asking about civilian or IAB complaints made
against Officer Weir. It's on the first page, it's in the
second paragraph, it's exactly what happened, Ms. Dollin said
I can't ask this of a third party witness, and Ms. Dollin
said, directed him not to answer.

21

Now we're going to have this problem all the time,
we shouldn't have it at all, these witnesses are not third
party neutral witnesses, they are part of the police officers
who were involved in this case.

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THE COURT: Mr. Beldock, you do say that she would

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2 not let him answer on the grounds that he was a nonparty
3 witness.

4 MR. BELDOCK: Yes.

5 MS. ELIZABETH DOLLIN: Your Honor?

6 THE COURT: Yes.

7 MS. DOLLIN: Elizabeth Dollin. I did attend Officer
8 Weir's deposition, and I believe, and I don't have the
9 transcript in front of me, that as Ms. Nelson had pointed out,
10 I believe my objection was to limit or allow him to answer
11 questions about IAB and CCRB complaints that were similar in
12 nature and to a relevant time period.

13 Now I don't, your Honor, have that deposition
14 transcript in front of me, but that has been our practice with
15 respect to nonparty witnesses.

16 THE COURT: And why do you make a distinction,
17 nonparty witnesses?

18 MS. DOLLIN: With all witnesses, your Honor, I'm
19 sorry, with all witnesses.

20 THE COURT: Oh, okay.

21 MS. DOLLIN: And so I believe that that was our
22 objection and our instruction, but I don't have the transcript
23 in front of me.

24 THE COURT: You didn't give me the transcript, Mr.
25 Beldock, did you?

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2 MR. BELDOCK: No, I did not, your Honor.

3 THE COURT: Okay. Well, I'm not exactly sure
4 exactly what happened though. Mr. Beldock asked him about
5 complaints and you object, and then what happens?

6 MR. BELDOCK: Well, if my letter is correct and I
7 thought it was when I wrote it, I asked him if there were ever
8 any civilian or IAB complaints made against him and whether he
9 was every disciplined as a police officer. I hope I'm
10 correct, it hasn't been objected to on the fact, and Ms.
11 Dollin would not let him answer on the grounds that he was a
12 nonparty witness. And I was less concerned about Weir than
13 the principle, in general.

14 THE COURT: Okay. Then what is the objection to
15 that question?

16 MS. DOLLIN: Your Honor, again, I'm not sure that my
17 objection was, and I don't have the transcript in front of me,
18 and I also raised that this was not presented, this issue of
19 Weir was not presented to us when we had our meet and confer,
20 so I'm not fully prepared to discuss it.

21 However, it has been our practice with respect to
22 witnesses, when they're asking, when the plaintiffs are asking
23 questions about IAB and CCRBs to please limit them to allow
24 them to answer questions about cases of a similar nature and
25 limited time.

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2 THE COURT: Okay, before you continue, let me just
3 be clear about my position on this. While I might do that if
4 I'm asking, if the question is asking the lawyers to produce
5 the information, I might make some limitation and tell them to
6 say what's relevant. I don't have the same confidence in a
7 witness. That is if you're at a deposition, I don't think you
8 can ask the witness just tell me the ones that you think are
9 relevant or similar. I just don't think that works.

10

 MS. DOLLIN: Your Honor, I understand. Again, we
11 based that objection on rulings from -- and we would, as Ms.
12 Nelson points out, we would know and point them out --

13

 THE COURT: Okay, but again, just so you'll be
14 clear, if I got a request from a party, let's say a plaintiff
15 in a case involving a police officer, and they said give me
16 the police officer's CCRB. The first issue, sustained/not
17 sustained, I would say that's not going to get you not
18 producing it. If you said similar/non-similar, I might let the
19 lawyer make that distinction because, you know, depending on
20 what kind of, if the question was if I had a case involving
21 police brutality and the question was whether or not the
22 police officer was accused of, you know, writing tickets, that
23 might be in play as to whether or not you're producing it.

24

 But regardless of what I would do in terms of what I
25 would allow the lawyer to do for the City, in a deposition, it

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2 just can't work. That is you can't ask a witness to give me
3 only the CCRB ones that are relevant because you're not
4 asking, that person can't make that determination. And so I
5 would not allow you to direct that witness not to answer the
6 broad question because I'm not going to allow him to make the
7 determination, him or her. And so at the deposition, it will
8 necessarily be broader because until the lawyers bring it out
9 or until, because there is no way, for example, I mean, for
10 example, if it's producing a production of documents, I mean
11 most of the lawyers on the plaintiff's side will say, well,
12 Judge, I don't want the defendant to make that determination
13 because they're going to be more narrow. And at least the
14 default is I can look it and I can determine whether or not
15 I'm going to allow it in.

16 At the deposition, it can't work that way because we
17 don't know what he's going to say and we don't know the full,
18 I mean it's not as if he says, okay, no, I don't have anything
19 relevant, that the plaintiffs' attorney is going to be able to
20 do anything about that. I don't think you can limit it at the
21 deposition.

22 So I would say that whatever distinction the City
23 was making in terms of those, I think we may have an issue
24 that needs to be addressed here.

25 MS. DOLLIN: Your Honor, I would point out that,

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2 again, I don't have a transcript in front of me, but I believe
3 at the Weir deposition, plaintiffs' counsel was asked to allow
4 and did ask questions like were you ever charged with theft as
5 a member of the NYPD, were you ever charged with other, and he
6 was allowed and he did answer those specific questions as to
7 whether you were ever charged with theft, with whether you
8 were ever charged with acting dishonestly. Those questions
9 were asked and answered.

10 So I hear what the Court is saying, but I don't want
11 it to appear that we just blocked the plaintiffs entirely, we
12 did not.

13 THE COURT: Okay. Well the bottom line here is that
14 at the deposition I expect the questions to be asked and
15 answered more broadly, and that is I don't expect if you are
16 asking a police officer about his disciplinary record, that
17 there be directions not to answer. Because there is no way for
18 us to determine ahead of time which ones are going to lead to
19 relevant evidence, because I don't know what's in it.

20 MS. NELSON: Your Honor, I do understand your
21 ruling, and once the witness answers that question and it is
22 clear from the nature of his answer that it's, really, it's
23 not relevant, how much further does he need to go into that
24 line of questions? If he says, your Honor, have you ever been
25 disciplined by the police department; yes, I have, I lost my

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2 shield, is that sufficient?

3 THE COURT: If he lost his shield?

4 MS. NELSON: Well, it's clearly -- it's clearly an
5 issue that is not relevant, whatever the issue may be,
6 whatever he was disciplined for.

7 THE COURT: The problem, Ms. Nelson, is I don't know
8 whether I could even answer the clearly question in the
9 abstract. So I'm not going to -- I'm not going to say, okay,
10 for the plaintiffs, you know, you have carte blanche, I'm not
11 going to say to the defendants if it's clearly not relevant,
12 because I don't know what that means.

13 MS. NELSON: Okay.

14 THE COURT: Because I don't even know the context in
15 which it's going to arise. I would say that you can anticipate
16 that, I'll err on the side of allowing it, because it's
17 discovery. And I don't, I mean we're not talking about, and I
18 think this came up in an earlier conference, we're not talking
19 about information that is locked in a safe someplace. I mean
20 at this point if there is something that needs to be
21 confidential, you can argue about that, but as to whether or
22 not we're going to allow questions about it, it seems to me I
23 don't know how we're going to make any determination about
24 what can and can't be considered relevant.

25 MS. DILLON: Your Honor, I think that the only thing

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2 that the defendants, and I understand the difficulty in, you
3 know, ruling in the abstract and sort of putting it in context
4 is, I just think that what we're trying to avoid is mini
5 depositions on completely unrelated incidents where the
6 allegations in either unrelated lawsuits or unrelated CCRB,
7 are delved into to a significant extent in terms of who --

8 THE COURT: Well, look, if any of the plaintiffs'
9 lawyers spends two hours talking about that and they lose
10 their seven hours, that's on them. If they want to spend time
11 on stuff like that, and the seven hours is up, the seven hours
12 is up. They won't be able to convince me that they need any
13 more time. I mean at some point the lawyer is their own --
14 their own limit as to what, I mean understand that for me the
15 questions you're asking become difficult because I could never
16 see myself spending two hours on something which I wouldn't
17 thin would be relevant. And I give everybody the benefit of
18 the doubt that no lawyer is going to spend time just for the
19 sake of spending time, they made their determination of what's
20 relevant, and what you think is relevant may be different, but
21 by and large lawyers spend time on what they think is
22 important.

23 But as I said, you might disagree on what's
24 important, but if they think that spending time on one
25 particular complaint is warranted, and that takes away from

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2 their ability to ask something else, they may, you know, they
3 may find that the seven hours is up and then they'll say we
4 want additional time and they'll come to me and I'll say,
5 well, you know, that ship has sailed.

6 MS. DILLON: Your Honor, I think that's just what I
7 was trying to establish was that the Court's ruling that
8 inquiry into disciplinary history, CCRB history, other
9 lawsuits, are presumptively relevant for the purpose of the
10 deposition, does not mean that that's grounds to ask those
11 questions in hours seven through nine of the deposition.

12 THE COURT: I think, I mean if, I've said what I've
13 had to say about it, I am assuming that all the lawyers here
14 are going to use their time, considering all the disagreements
15 that we've had, you know, you are always going to have the
16 burden of demonstrating to me that you didn't get to ask all
17 of the important questions. And so I always tell lawyers
18 this, if you have any question about what's the most important
19 questions, ask the most important questions first.

20 I mean we were talking about Mr. Warren before
21 deferring, I mean if he wants, if he wanted to talk about an
22 hour about some CCRB thing, he'd better do that not in the
23 beginning and use up his seven hours. And so I think the rule
24 is there for the reason that we don't want lawyers thinking
25 that they can say and do whatever they want and take up the

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2 time of a witness.

3 So, you know, you can be judicious in your use of
4 time and that's the limitation that people have.5 MR. BELDOCK: Judge, can we speak some more about
6 time now, your Honor, I think we're through. I hope we're
7 through with this issue.8 MS. NELSON: Just two more very small matters, Mr.
9 Beldock, and one is, your Honor, from your Honor's ruling, I
10 don't know that I should assume, but we can raise issues
11 regarding individual witnesses that are coming up for
12 deposition, in the event we seek ahead of time that we need to
13 move for a protective order or something else we cannot agree
14 with plaintiffs once we confer?15 THE COURT: You lose none of the rights that you
16 have under the federal rules, and I think that's one of them.17 MS. NELSON: Thank you. My, but the other thing I
18 want to discuss is the limitations to the Reynolds deposition.
19 In light of what your Honor said, I don't believe that we were
20 out of our set hours, but we certainly didn't have an hour.
21 And if all the deposition is going to be reopened for is so
22 that Mr. Warren can inquire into its Exhibit 9, then I don't
23 believe that the deposition should be extended for an hour.

24 MR. WARREN: Judge --

25 THE COURT: Okay. All right, the way I answer that

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2 question is always this way. I'm not a big fan of limiting
3 depositions, per se, because it gives one side or the other
4 the opportunity to say, if I say well you get an hour, then
5 the other side says, well, we'll take an hour. And by the same
6 token, the side that's defending can stretch it out and then
7 it gets over the hour.

8 As long as Mr. Warren has traction in his questions,
9 then he'll be on safe ground. If, whoever, depending on the
10 deposition, says, you know, gets to the point and they think
11 Mr. Warren is just harassing the witness and he's not asking
12 anything that's really productive, then, you know, stop the
13 deposition, call me, we'll answer that question.

14 But I don't know where it will lead. I mean he could
15 start asking him about the blog and, you know, the next thing
16 I know, there's a whole area of inquiry that opens up that's
17 going to be even longer than the blog inquiry.

18 MS. NELSON: Okay, but my understanding is that the
19 deposition is going to be reopened for inquiries into the
20 blog.

21 THE COURT: And anything that reasonably that leads
22 to, because I don't --

23 MS. NELSON: The blog, you mean?

24 THE COURT: Right.

25 MS. NELSON: I understand.

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2 THE COURT: Right, I mean if, he might talk about
3 the blog and then he starts talking about a tweet and a book
4 he's drafting, and --

5 MS. NELSON: Well, your Honor, that actually brings
6 up the other issue that I want to raise, which was the
7 documents which were found after the deposition. The blog is
8 available to everyone, it wasn't our obligation to produce to
9 plaintiff documents that were publicly accessible. To the
10 extent those were not ready and available at Mr. Reynolds'
11 deposition when he did his first sitting, I don't believe that
12 plaintiff should then get another bite to ask him about
13 documents that they did not locate before his deposition that
14 we did not obstruct them from locating.

15 THE COURT: Okay, unfortunately, in the electronic
16 age, things like this can happen. I'm not going to prevent
17 them from asking questions about stuff which they discovered
18 afterwards and I'm not going to blame you for not giving them
19 any information. Because the problem, and this is the
20 difficultly we have when we start to have people make
21 determinations about what's relevant.

22 I understand your position, and if I understand your
23 position, even if you knew about it you would not have
24 produced it because you wouldn't have thought it was relevant.

25 MS. NELSON: Well, no, it's not in our possession,

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2 custody and control, your Honor.

3 THE COURT: Well you would not have identified it --
4 well, if you have a witness and the witness has something, you
5 might, you might feel that you ought to reveal things about
6 the witness. I mean if the witness had written a book, you
7 don't think you would let the plaintiffs know.

8 MS. NELSON: I think they are aware of all the books
9 that were written, your Honor.

10 THE COURT: My point is though that I don't think
11 that I can -- I don't think it makes sense to limit someone
12 based upon information which seems related to what I opened
13 the deposition for. Are you saying what they've discovered is
14 completely, is something entirely different?

15 MS. NELSON: We don't know, your Honor. At the
16 deposition we asked Mr. Warren to mark as exhibits those
17 documents that we were objecting to that he wanted to reserve
18 his right on. He marked Exhibit 9, he marked nothing else.
19 And pursuant to the application that the plaintiffs made, they
20 found it after the fact. They found other information after
21 the fact that they now want to inquire into at this sitting.

22 THE COURT: Okay. Well, I guess there are two ways
23 to handle it. I don't know what it is that we're talking
24 about, Mr. Warren, but you can either, you can let me know and
25 I can rule on it ahead of time, or you can run the risk of

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2 this becoming an issue.

3 MR. BELDOCK: I covered this in my letter, Judge.

4 MR. WARREN: It's in the letter, Judge.

5 MR. BELDOCK: I've already, I mean this is totally,
6 this is such nitpicking. I said one such internet document,
7 one of two which we did not discover until after Reynolds'
8 deposition was ended, and which was not, and should have been
9 produced by defendants in response to the notice and subpoena
10 for Reynolds' deposition, in which we asked for any and all
11 materials, in any form he may have, related in any way to the
12 subject matter of this case, pertaining to discussion about
13 his involvement in the initial arrests of the five persons
14 including two of the present plaintiffs outside Central Park
15 on the night of the event. I mean that we are being --

16 THE COURT: Mr. Beldock, Mr. Beldock --

17 MR. BELDOCK: That we are getting to this level of
18 debate --

19 MR. WARREN: That's right, I mean we're being unduly
20 --

21 THE COURT: Counsel, counsel, okay. All right,
22 let's not forget rule number one, when the judge starts
23 talking, you have to let the Judge finish. Okay. In that
24 regard, if, if what you're telling me, and understand, when
25 you, when the parties are talking, you're a lot more familiar

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2 with what you've said to me than I am, because I'm not as
3 focused on what it is. And if what you're saying is that this
4 is information that should have been produced because it
5 already related to his testimony, and I don't know exactly
6 what it is, so it doesn't register the same way to me, that
7 will come out at the deposition, I'm sure. But you have not
8 let the Corp Counsel know what it is that you've discovered
9 that should have been produced?

10 MR. BELDOCK: We've given it to them.

11 THE COURT: Oh, so you know what it is.

12 MR. BELDOCK: It's part of my letter.

13 MS. NELSON: I understand that, but if there, part
14 of our objection, first, is that we should have produced it.
15 So my interpretation of that is that we now need to Google
16 every witness that we produce in order to give plaintiffs what
17 are publicly available. The document that they said they found
18 after Reynolds' deposition was something that was publicly
19 available on the internet. And apparently they found it
20 pursuant to a search that they did after his deposition. I
21 don't think that they should have the right to inquire into
22 anything that they found after his sitting where we opened
23 this deposition for a limited purpose. We asked Mr. Warren to
24 mark those documents that he intended to seek relief from the
25 Court, he marked Exhibit 9. If the deposition is going to be

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2 reopened, it should be just issues limited just to Exhibit 9.

3 THE COURT: Okay, I disagree. You get to, if --
4 look, I'm not -- search engines can find stuff, you can do
5 searches, you can find stuff, if you do it on Goggle it might
6 come up, if you do it on ask.com, it might come up. If you
7 don't put in the right search terms, it might not come up.

8 Look, this is not even a question of holding the
9 defendants responsible for not finding it. I'm not sure
10 anybody would have necessarily found it. So the only question
11 for me is if I'd known about it ahead of time, would I have
12 said you can ask him about? And since you are already doing
13 this deposition, the answer is yes.

14 MS. DILLON: Your Honor, I just want to clarify with
15 respect to the latter part of your ruling, that the premise is
16 if we're already going to reopen this particular deposition,
17 it's not giving plaintiffs carte blanche to Google witnesses
18 after their depositions and use those documents as grounds for
19 a second sitting?

20 THE COURT: The only thing that's in play now is the
21 exhibit that was marked having to do with the blog, what was
22 mentioned in Mr. Beldock's letter, and anything that the
23 questioning flows from. I'm not, so you understand this, Mr.
24 Warren, if you got some minions to go out and do searches on
25 the web and found something else, don't spring it on the

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2 defendants.

3 MR. WARREN: Judge, I --

4 THE COURT: Just, I don't expect that you --

5 MR. WARREN: I, respectfully, I don't operate in
6 that fashion, but I think that in the metaphorical sense a
7 gentle stream oftentimes turns into a wider river, oftentimes
8 turns into a lake, and ultimately goes to the ocean. And in
9 terms of discovery process, which your Honor so eloquently
10 referred to not long ago, that is the nature of a deposition.
11 And so I don't want to be unduly restricted as a result of
12 entering this stream with the hopes of going to that ocean. I
13 don't want to be unduly restricted by their subjective
14 perceptions of how I should be limited. I just, respectfully,
15 I'm requesting that your Honor agree with me on that point.

16 MS. DILLON: I think, your Honor, that we all agree
17 at this point that going forward with respect to the Reynolds
18 deposition and any other deposition is that if there is a
19 basis for defendants to instruct the witness not to answer,
20 that we'll order, in the case of the Reynolds deposition, for
21 some reason to end the deposition, that we'll promptly reach
22 out to the Court in the first instance in the hopes of getting
23 a ruling at that time.

24 THE COURT: Okay. And just a reminder, if you have,
25 with the Reynolds deposition, anyone that you think might be

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2 potentially of interest to me, let me know when they're taking
3 place. We don't work nine to five, we're here after that, so
4 you can call us. If you call the law clerk, you can call the
5 law clerk at six, seven, who knows when they'll be here. They
6 may not go home as far as I know, they're here when I leave
7 and they're here when I come in the morning.

8 And the reality is, is that even if I'm not here, if
9 you call you may be able to reach me. So don't even, you
10 know, there is no time that is actually off limits once you
11 get the law clerk.

12 MR. WARREN: I guess, you know, my concern is that I
13 don't want, from what I'm listening to from the other table, I
14 don't want this to turn into an obstructive spitting contest,
15 you know, where it's an attempt to violate the nature of the
16 flow or the questions in the deposition. And whether it's
17 intentional or otherwise.

18 And so I wouldn't want to belabor, I wouldn't want
19 to, for example, be put in the situation where as a result of
20 their recalcitrance, unfounded recalcitrance, we're forced to
21 call you ever 10 minutes or every 15 minutes we're forced to
22 call you to deal with these type of issues, or 5 minutes.

23 THE COURT: Well, okay, let me just say, the first
24 time you call me will probably be the last time you get to
25 call me, and whoever loses that probably won't get to call me

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2 again.

3 MS. NELSON: And I will say, your Honor, we've had
4 depositions that we had to reopen and we have been very
5 accommodating as to not only scheduling, but at deposition I
6 don't believe we have ever engaged in the behavior that Mr.
7 Warren is anticipating. And it's one of the reasons that we
8 want to get the parameters clear now, so that we're all aware
9 of it, so we go into this deposition, we all know what to
10 anticipate.

11 THE COURT: Again, just so we'll understand that
12 there, and I can't anticipate a situation where information
13 could come to Mr. Warren, not necessarily even from the web,
14 as he's asking about, as he's asking questions. I think you
15 have to, you have to understand that that's not going to be
16 necessarily a situation in which I'm going to say, well, you
17 can't ask that question just because it came to you belatedly.
18 The deposition will be reopened, I don't expect there to be
19 any strange surprises, but I will let the deposition go where
20 the flow takes it.

21 MR. BELDOCK: May I, your Honor?

22 THE COURT: Yes.

23 MR. BELDOCK: There is, I thought I was going to
24 raise this 15 minutes ago, there is one pressing issue,
25 discovery cutoff is now, if I remember correctly, September

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2 30th. Obviously, and we've discussed this, it can't be
3 September 30th. And there is a difference of opinion on the
4 two sides as to whether your Honor should set a cutoff date.
5 It will be almost nine years since we started this case at the
6 end of this year, it's three years of discovery. We appreciate
7 the pressures, absolutely, on both sides, no matter what
8 debates we have, the case is difficult, many witnesses, many
9 papers and so on. And you have before you the problem of
10 8,000 papers, so I'm a little hesitant to say what I'm about
11 to say, but I'm going to say it anyhow, we want a cutoff date
12 at the end of the year, except for expert witnesses.

13 We want to be able to finish the depositions. We
14 have maybe 15, 20 depositions --

15 THE COURT: And the City doesn't want a cutoff date?
16 Is that what it is?

17 MR. WARREN: The City does not want a -- no. No,
18 they don't want a cutoff date at the end of the year, that's
19 our understanding.

20 MS. DAITZ: Your Honor, it's not that we an
21 indefinite extension of discovery, we've agreed to request an
22 extension at the time until December 31st, but we don't believe
23 that we'll be able conclude all of the remaining discovery in
24 that time period. And part of the reason is not because
25 defendants are not -- you know, defendants are producing

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2 witnesses, or producing documents, we've had a pretty
3 significant delay in getting the releases from plaintiffs that
4 we need, in getting documents from third parties in preparing
5 to take the plaintiffs' depositions. The plaintiffs just
6 requested another extension of time to respond to our
7 discovery request, which we consented to.

8 But the delays and the holdups to some extent, and
9 some have to do with joint applications or discovery
10 applications that we, you know, await a ruling, and then
11 before the depositions at that time. But defendants shouldn't
12 be in a position where plaintiffs can complete taking the
13 officer depositions by mid November and then we have six weeks
14 to do all the discovery that we need to do, even assuming, for
15 the sake of argument that we have all the information we need
16 at that time to move forward with the depositions that we need
17 to take.

18 So the only reason that we're anticipating that we
19 won't necessarily be able to complete all the fact discovery
20 by December 31st is, you know, pending the Court's ruling on
21 the work product issue at the least, we have a number of
22 witnesses that we'll need to prepare and produce for
23 deposition and then still have all of these 14, 15 familial
24 plaintiffs to take their depositions.

25 MS. NELSON: In addition to that, your Honor, I know

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2 your Honor is aware of the numerous depositions that the
3 parties have indicated that we wanted to take, and I believe a
4 couple of months ago plaintiffs added to that list. And we've
5 been producing those witnesses for deposition, as well.

6 So they have added to their list, we've produced
7 those people, in addition to the witnesses that they
8 previously had on notice. We just don't believe it's realistic
9 that we're going to finish everything by December 31st.

10 THE COURT: Okay, well, first of all, I think
11 everybody wants to have an end to it, including Judge Batts,
12 so we're going to set a discovery cutoff. But by the same
13 token, I don't think any -- well, most of the District Judges
14 don't want a case that is half prepared for discovery. So what
15 we'll do is we'll set a discovery cutoff, and I know you have
16 lots of work to do, but I need to know what's going to be
17 happening, what needs to be done in discovery so that I could
18 have some sense of whether or not you can make the deadline.

19 I mean I know you said some things here, but it's,
20 you said that there have been additions, and I'm not exactly
21 sure what you propose to do in the next three or four months.

22 MS. DAITZ: Your Honor, I would say we probably have
23 in the vicinity of 30 to 40 depositions remaining.

24 THE COURT: And what's the difficulty in starting to
25 schedule them now?

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2 MS. DAITZ: Oh, we have, your Honor, we have
3 depositions on the schedule and, in fact, the parties have
4 even arranged to travel to certain correctional facilities to
5 depose nonparty witnesses, including one in Western
6 Pennsylvania in the coming weeks. So we certainly are all
7 working together on the scheduling issues, and we, you know,
8 broached the subject with plaintiffs again about just getting
9 the last of the corrected releases and we're still awaiting,
10 like I said, the responses from the IRS regarding the tax
11 forms, and certainly of Daniel Wise.

12 And the parties are continuing cross productions of
13 documents, we're awaiting plaintiffs' responses to defendant's
14 last document request and interrogatories are due on September
15 15th. So upon receipt and review of that information, we should
16 definitely be in the position to start scheduling the
17 remaining familial plaintiffs' depositions, you know, in that
18 time period. Assuming, because I'm an optimist, that there is
19 no deficiencies in plaintiffs' responses and we take what we
20 get and we'll be prepared to go forward at that time. And, if
21 not, we'll certainly bring any issue to your Honor's attention
22 prior to whenever our next conference --

23 THE COURT: So you're going to attempt to schedule
24 to complete discovery, you're just not sure that you'll be
25 able to do it.

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2 MS. DAITZ: We're just not sure that that's enough
3 time to get it done, your Honor, but we're making every
4 effort.

5 THE COURT: Anybody who makes a good faith effort
6 will always get my ear. Anything else?

7 MR. BELDOCK: The next conference date before your
8 Honor --

9 THE COURT: Yes.

10 MR. BELDOCK: And then maybe you can be, we can be
11 more informative as to what has to be done yet. Early
12 November I think would be a good amount of time to develop
13 what we're doing.

14 THE COURT: Okay. All right, tentatively, November
15 10th at 10:00. I don't actually have my trial calendar, but
16 we'll, if there is any change we'll let you know.

17 MR. BELDOCK: We'll bring Mr. Kendall back for that
18 day.

19 THE COURT: I think that might be cruel and unusual
20 punishment. Okay, we'll be adjourned and I'll get back to you
21 with the --

22 MR. BELDOCK: Thank you.

23 MR. WARREN: Thank you, your Honor.

24 MS. DAITZ: Thank you, your Honor.

25 THE COURT: Don't forget to let me know when the

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2 Reynolds deposition and the others are going to be.

3 (Whereupon the matter is adjourned to

4 November 10th, 2011 at 10:00 a.m.)

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C E R T I F I C A T E

I, Carole Ludwig, certify that the foregoing transcript of proceedings in the United States District Court, Southern District of New York, McCray, Richardson, et al. v., Docket #03cv9685 was prepared using mechanical transcription equipment and is a true and accurate record of the proceedings.

Signature_____

CAROLE LUDWIG

Date: September 13, 2011